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**The 15th International Conference on
Islamic Economics and Finance (ICIEF 2024):
Driving the Agenda
for a Sustainable Humane Economy**



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Transliteration Table: Consonants

Arabic	Roman		Arabic	Roman
ب	b		ط	ṭ
ت	t		ظ	ẓ
ث	th		ع	‘
ج	j		غ	gh
ح	ḥ		ف	f
خ	kh		ق	q
د	d		ك	k
ذ	dh		ل	l
ر	r		م	m
ز	z		ن	n
س	s		ه	h
ش	sh		و	w
ص	ṣ		ء	’
ض	ḍ		ي	y

Transliteration Table: Vowels and Diphthongs

Arabic	Roman		Arabic	Roman
اَ	a		اَ، اِيَّ	an
اُ	u		اُو	un
اِ	i		اِي	in
اَ، اِ، اِيَّ	ā		اَو	aw
اُو	ū		اَي	ay
اِي	ī		اُو	uww, ū (in final position)
			اَي	iyy, ī (in final position)

Source: ROTAS Transliteration Kit: <http://rotas.iium.edu.my>

Examination of Preservation of Wealth as a Prime Limb of *Maqāṣid Al-Sharī'ah* to Justify Bitcoin in Islamic Jurisprudence

M A K Mohamed Bishrul Rifath*

Dr. Ataollah Rahmani**

M J M Arafath Careem***

Abstract: This article adopts a *maqāṣid al-sharī'ah* approach to dealing with Bitcoin transactions. The Islamic law's position on Bitcoin transactions is not explicitly clear. Unsurprisingly, Islamic law provides no rulings specific to Bitcoin transactions, as Bitcoin never existed at the time of Prophet (PBUH). Such disparity has created controversy among contemporary Islamic jurists on the permissibility of such transactions. While many Islamic jurists argue for the impermissibility of Bitcoin and any associated transaction involving Bitcoin, few Islamic scholars counter-argue the permissibility of Bitcoin if it is so engineered to fully adhere to Islamic values and principles. The article adopts a legal research (doctrinal) methodology in conformity with its agenda which is to review the Islamic rulings on the impermissibility of bitcoin transactions. This article suggests that the existing disparity is eliminated with a *maqāṣid al-sharī'ah* approach that takes a broader view of the philosophy and values of Islam linking the explicit rulings of Islamic law and jurisprudence to their implicit objectives. The research findings suggest that bitcoin and any transactions involving bitcoin fail to comply not only the jurisprudential requirements of permissibility but also the implicit objectives of *sharī'ah*,

* PhD Researcher at the Institute of Islamic Banking and Finance (IIBF), International Islamic University Malaysia. Email: bishrulrifath21@gmail.com. Corresponding author

** Lecturer in Commercial Law, Al-Maktoum College of Higher Education & School of Business, University of Dundee, United Kingdom. Email: arahmani001@dundee.ac.uk

*** PhD Student, International Islamic University Malaysia (IIUM), Malaysia. Email: arafathcareem@gmail.com

notably the “preservation of wealth” (*ḥifẓ al-māl*). This study emphasises that the objectives of *sharī‘ah* must be followed in managing Bitcoin-related entities by formulating corporate objectives and Bitcoin policies complying with *maqāṣid al-sharī‘ah*. Furthermore, these formulated objectives must be incorporated to indicate whether the Bitcoin entity upholds Islamic principles.

Keywords: Bitcoin, Permissibility, Impermissibility, Economies, *maqāṣid al-sharī‘ah*

Abstrak: Makalah ini menggunakan pendekatan *maqāṣid al-sharī‘ah* dalam menangani transaksi Bitcoin. Posisi hukum Islam berkenaan transaksi Bitcoin tidak dinyatakan secara jelas dan tersurat. Ini tidaklah menghairankan kerana hukum Islam tidak memberikan sebarang keputusan khusus mengenai transaksi Bitcoin memandangkan Bitcoin tidak wujud pada zaman Nabi (SAW). Perbezaan ini telah menimbulkan kontroversi dalam kalangan fuqaha kontemporari mengenai keharusan transaksi sedemikian. Sementara banyak fuqaha Islam berhujah menyatakan ketidakharusan Bitcoin dan sebarang transaksi yang melibatkannya, segelintir sarjana Islam pula membantah dengan menyatakan keharusan Bitcoin *jika* ianya direkabentuk untuk mematuhi sepenuhnya nilai dan prinsip Islam. Makalah ini menggunakan metodologi penyelidikan undang-undang (doktrinal) selaras dengan agendanya, iaitu untuk mengkaji semula ketetapan Islam mengenai ketidakharusan transaksi Bitcoin. Makalah ini mencadangkan agar perbezaan pendapat sedia ada dihapuskan dengan menggunakan pendekatan *maqāṣid al-sharī‘ah* yang mengambil kira pandangan yang lebih luas tentang falsafah dan nilai-nilai Islam, dengan menghubungkan ketetapan eksplisit hukum dan fiqh Islam kepada matlamat implisitnya. Hasil penemuan penyelidikan mencadangkan bahawa Bitcoin dan sebarang transaksi yang melibatkannya gagal mematuhi bukan sahaja keperluan fiqh untuk kebolegunaan, malah turut melanggar matlamat tersirat *sharī‘ah*, terutamanya “pemeliharaan harta” (*ḥifẓ al-māl*). Kajian ini menekankan bahawa matlamat *sharī‘ah* wajib diikuti dalam pengurusan entiti berkaitan Bitcoin dengan merumuskan objektif dan polisi korporat Bitcoin yang mematuhi *maqāṣid al-sharī‘ah*. Tambahan pula, objektif yang dirumuskan ini perlu digabungkan untuk menunjukkan sama ada entiti Bitcoin tersebut menegakkan prinsip-prinsip Islam.

Keywords: Bitcoin, Keharusan, Ketidakharusan, Ekonomi, *maqāṣid al-sharī‘ah*

Introduction

The historical development of money has gone through various phases. Its chronological order begins in ancient times, primarily based on the barter system. Subsequently, it progressed through the commodity money system, metallic money system, and fiat money system and has now arrived at the modern-day crypto or digital currency system. Since ancient times, money has been used for various purposes as a medium of exchange, measuring values of other commodities, as a standard to compare values and goods, and as a store of value in general (Hasan, 2015). According to the historical record, money has been used in various forms ranging from metals to stones, furs, shells, tobacco, and animal skins (Sanusi, 2002). With the invention of the banking system, money evolved from the concept of paper money to contemporary electronic money. This evolution of money has allowed people to carry less paper money to carry out transactions. This concept of electronic money is aligned with advancements in technology. As a result, people mainly depend on ATMs, mobile banking, e-banking, e-wallets, and credit cards to process transactions.

That being said, the advent of cryptocurrencies has drastically impacted the overall architecture of economic relations and financial systems in the contemporary world. The future of money is believed to lie on cryptocurrencies. It may provide independent accessibility via the internet and give users personal freedom over how they execute their business since it is not supervised or authorised by a standard regulatory organisation. Arsov (2017) outlined four properties of Bitcoin; divisibility (it can be divided into equal pieces, which cannot be done with gold), malleability (it can be combined with other Bitcoins to fit in a wallet and be stored in an account), counterfeit-adversity (it can be seen who owns whose Bitcoins if someone lies by having a copy of the ledger), and fungibility (replaceable by another identical item). It is possible to observe that Bitcoin is distinguished by its characteristics from traditional currencies in the form of coins and paper.

From this point of view, a need for a statement of Islamic jurisprudential aspects about the circulation of Bitcoin arises as this is an emerging issue related to financial transactions. Several studies have been conducted by profound academic scholars proposing the pros and cons of using Bitcoin, their juristic opinions on the *ḥalāl* and

ḥarām aspects of Bitcoin, and their permissibility based on an Islamic perspective. However, there is a significant research gap in reviewing the permissibility of Bitcoins based on the prime element of the *maqāṣid al-sharī'ah* approach, i. e., “preservation of wealth” (*ḥifz al-māl*). Therefore, this research aims to study the concept of Bitcoin from a *maqāṣid al-sharī'ah* perspective, notably the “preservation of wealth” and clarify its legal position.

The question of permissibility of Bitcoin has three aspects. First, what is “Bitcoin” and how can it be differentiated from other cryptocurrencies? Second, what are the different views of modern Islamic scholars and why do they have divergent juristic opinions on the permissibility of using Bitcoin in business and financial transactions? Third, as the majority of scholars relying on traditional Islamic jurisprudence would resist against permissibility, would it be possible to employ a new jurisprudential methodological approach based on *maqāṣid al-sharī'ah* to argue for the permissibility of dealings with Bitcoin and to reconcile the issue? In order to provide answers to these questions, this research formulates three objectives. First, it seeks to explore and define the terms “Cryptocurrencies” and “Bitcoin” to understand Bitcoin and how it differs from other cryptocurrencies. Second, it aims to analyse different Islamic juristic opinions on Bitcoin as a form of cryptocurrency that can be used to facilitate exchanges of goods and services in modern business. Third, it intends to suggest a reconciliation approach based on the *maqāṣid al-sharī'ah* theoretical framework, so as to tackle the existing disparity over the concept and use of Bitcoin in Islamic businesses.

This article uses a qualitative methodology and a deductive approach to accomplish the research. A qualitative approach was selected for this study because this approach is beneficial for studies seeking the reflection of individual reality and enables a researcher to see how people interpret their experiences, construct the world and the associate meanings with it (Merriam, 2009). A qualitative approach also allows the generation of comprehensive insights, for the purpose of this study, of *sharī'ah* scholars’ perception and experiences on cryptocurrencies and notably Bitcoin. The paper also takes an inductive approach. As Islamic jurisprudence has not paid adequate attention to Bitcoin, this study attempts to gather data that are hoped to lead to new insights and establishment of new theories (induction), in lieu of using a theory to

explain findings (deduction). This study thus aims to explore and form a deeper understanding of Bitcoin through inductive research based on *maqāṣid al-sharī'ah*. The relevant data is collected from both primary and secondary sources. The primary sources are the Qur'an and Sunnah that can offer accurate information directly. The secondary sources, meanwhile, come from books or articles that might not be as accurate as the primary sources, yet can be relied on for their relevance and valid reasoning. Documentative data collection is the method used to gather information depending on the research problems. As a result, by gathering, analysing, and synthesising data, this study aims to provide a descriptive and analytical discussion to reexamine the problem methodically and objectively in order to present a valid tailored solution based on reliable reconstruction of facts and findings.

Towards its objectives, the rest of the article is divided into four sections. In the next section, this article discusses the concept and nature of cryptocurrencies including Bitcoin, their conceptual and technical differences and mechanisms. Then, the article addresses the controversial position of modern Islamic scholars in relation to the question of permissibility of cryptocurrencies including Bitcoin. Next, this article advocates for closing the gap in Islamic jurisprudence regarding the question of permissibility of Bitcoin based on the important pillar of *maqāṣid al-sharī'ah*, i. e. the protection of property, will be advocated. The final section of this article is the conclusion based on the discussion and arguments presented.

Bitcoin and Cryptocurrency

Definition

According to the Oxford Dictionary (2014), "Cryptocurrency is any system of electronic money used for buying and selling online and without the need of a Central Bank." The same dictionary defined Bitcoin as "a compound of the words bit and coin, and a type of digital currency in which a record of transactions is maintained, and the computational solution of mathematical problems generates new units of currency, and which operated independently of a central bank." As Bitcoin is also an instance of electronic money, it can be suggested that it is a type or an example of cryptocurrency created systematically based on mathematical calculations, where the transactions are recorded

and operated through a decentralised digital network without the need for intervention from any intermediary banks.

Cryptocurrencies are digital (virtual) currencies that do not possess any physical form akin to fiat money. In fact, cryptocurrencies are digital assets created to function as a means of trade. A familiar example of cryptocurrencies is Bitcoin which is a digital currency created by a person or group of persons under the pseudonym “Satoshi Nakamoto” in 2007 using the SHA-256 cryptographic function as made evident through an examination of blockchain technology (Billah, 2019). Bitcoin was introduced to the world in 2009. It is the most well-known cryptocurrency that utilises cryptography to control administration, creation, and safety. It is also the first digital currency in the world that uses the concept of cryptography (Wong, 2014). Cryptography is used to safeguard transactions and regulate the production of new currency units in cryptocurrencies. Cryptography, however, cannot fully guarantee the security feature of cryptocurrencies, so they are frequently exposed to the risk of counterfeit. As a decentralised digital currency, however, Bitcoin utilises encryption techniques to monitor the generation of units of currencies and authorises transactions that operate independently from the central banks (Nashirah, 2017).

Bitcoin is the first decentralised cryptocurrency. In pursuit of Bitcoin, a number of other cryptocurrencies including Ether, Litecoin, Bitcoin Cash, Bitcoin Gold, Ripple, EOS, Stellar, and NEO were introduced. EOS, Litecoin, Ripple, Ether, and Bitcoin Cash possess faster transaction speeds than Bitcoin. While NEO is integrated with the NEO network to comply with laws in many jurisdictions, Stellar integrated itself with banks to earn formal recognition to be used in transactions with multiple currencies (Coin Market Cap, 2022). Despite its limited uses compared with recent competitors and the dramatic volatility of value in recent years, Bitcoin is still the largest cryptocurrency by market capitalisation (Narayanan A et al., 2021). Today, the top ratings of cryptocurrencies based on their popularity are respectively Bitcoin, Litecoin, Ethereum, Zcash, Dash, Ripple, and Monero. Among these, Bitcoin represents as the prime example of cryptocurrency that is based on a collection of modern monetary concepts and technologies that form fundamentals of what is often referred to as the “Digital Money Eco-system (Antonopoulos, 2015).

Mechanism

The mechanism of Bitcoin can be analysed regarding its two main applications, i.e., the operations of Bitcoin, and the transactions that make use of Bitcoin.

Operational Mechanism

Gapur Oziev and Magomet Yandiyev (2018) state three consecutive levels in which Bitcoin operates “Ownership of Bitcoin,” “Emission of Bitcoin,” and “Solving mathematical algorithms.” In the “Ownership of Bitcoin,” the Bitcoin user needs to own Bitcoins and use them in transactions. Initially, the user needs to download a unique software programme on the computer, which is used as a wallet to store Bitcoin. Alternatively, the user can purchase Bitcoins from the market and store them in the wallet using fiat money. In the “Emission of Bitcoins,” the user uses a unique software programme on the computer to solve complicated mathematical equations generated by the Bitcoin system. The user who first solves the equation (also known as hash) is rewarded with a Bitcoin. This step is followed by “Solving mathematical algorithms,” in which the user who solves the equation faster gets the opportunity to execute transactions at that particular time.

The process of Bitcoin mining and implementing cryptographic hash functions in the transaction can be explained using the following example. User A wants to send 60 Bitcoins to user B. First, this message will be translated to code by Bitcoin software (cryptographic hash functions, Secure Hash Algorithm [SHA-256]). Then, the HA-256 algorithm generates a unique, fixed-size 256-bit hash (transaction code). The CPUs (Central Processing Units) in the blockchain will compete to solve the SHA-256 programming code. The best CPU solves the SHA-256 code and updates the transaction ledger. Further, the best CPU will compute and validate the chain transaction. By following all these processes, user B will receive the payment of 60 Bitcoins. By digitally signing a hash of the initial transaction and the subsequent owner’s public key and adding them to the end of the coin, each owner transfers ownership of the coin to the next. The payee can verify the chain of ownership by checking the signatures (Kroll et al., 2013). Therefore, the Bitcoin mining method involves the best CPU, which will receive Bitcoins in two ways: firstly, by solving the transaction code from the system and secondly from the user as minimal transaction cost.

Transactional Mechanism

A transaction is a transfer of value via the Bitcoin network that is compiled into blocks. A transaction typically dedicates all input Bitcoin values to new outputs and refers to prior transaction outputs as new transaction inputs (Miers et al., 2013). All network users have access to the ledger, a single public record of all transactions (Moore & Christin, 2013). Transactions are irreversible once they have received enough confirmation to cover them. The “ledger” used in the transaction of Bitcoins is the introductory book or computer file used to record total financial transactions measured in terms of a single unit of currency, with debits and credits shown in separate columns and beginning and ending balances for each account (Ron & Shamir, 2013). Moreover, a blockchain is an open, distributed ledger that may effectively and permanently record transactions between two parties (Reid & Harrigan, 2013).

As a peer-to-peer cryptocurrency platform, distributed open ledger networks are used. This platform serves as the hub, framework, and instrument for ongoing innovation. It is built for high-speed transactions and enables users to transact in assets safely, securely, and for meagre fees. The blockchain, which stores an online ledger of all transactions made with Bitcoins, is how Bitcoin operates. It offers a data structure for this ledger that is susceptible to a small number of hacker threats and can be copied across all computers running Bitcoin software. In a scenario of transferring 60 Bitcoins from user A to user B, the transaction process consists of 3 stages. The first stage includes the current condition, confirming that User A possesses 100 Bitcoins from previous transactions. The second stage involves the validation and evaluation process. Here, the transaction will be validated across all ledger networks that user A has 100 Bitcoins; the network will identify the transaction of 60 Bitcoins to user B. Then, the transaction can be added to the open ledger network if it is valid. Finally, the transaction will be included in the transaction chain. The third stage includes approval of the transaction chain, where User A transferred 60 Bitcoins to user B, and user A Bitcoins became 40.

Jurisprudential Controversy over Bitcoin

There are two approaches in Islamic jurisprudence regarding Bitcoin, impermissibility, and permissibility.

Impermissibility Approach

The impermissibility of Bitcoin can be analysed from different perspectives and opinions. Mufti Muhammad Abu Bakr (2018) proposes that many recognised Islamic scholars, institutions, and organisations oppose the permissibility of Bitcoin. These include the grand Mufti of Egypt, the government of Turkey, the Palestine Fatwa Centre, and Sheikh Haytham of the U.K., on the basis that Bitcoin is not a legal contract, unknown issuer, decentralised authority, and it can be seamlessly used for money laundering.

Initially, when considering the term “Bitcoin,” Dr. Ali al-Qurra Dagi, in an interview with Al-Jazeera in 2017, argues that Bitcoin does not hold the position of “currencies” because they do not possess two significant characteristics of money: as a medium of exchange and a “store of value.” Medium of exchange denotes that money can be exchanged for something else (i.e., goods and services). In contrast, “store of value” denotes that money can retain its value for a considerably long time. Dr. Ali asserted that Bitcoin does not possess these two significant characteristics due to a lack of centralised regulation. Further, he emphasised that if Bitcoin does not possess the traits of currencies, it cannot be qualified as an “asset” because he reiterates that due to the lack of a “regulatory body,” transaction through Bitcoin is impermissible.

Bitcoin may not be able to meet the unique traits of money because it contains elements that are incompatible with Islamic preaching. (Siswantoro, Handika and Mita, 2020). Using Bitcoin as a financial vehicle involves a lot of speculation, which leads to *al-gharār* and *maysir*, the elements forbidden by Islamic teachings. Furthermore, the government’s ambiguous legality surrounding the usage of Bitcoin has a more significant negative impact, such as misappropriation and use of funds for crimes like terrorism and money laundering. As a result, the prevention of harm takes precedence above its utility. (Abd. Majid et al., 2021). Dr. Abdus Sattar (2018) opposes the usage of Bitcoin due to three main reasons: prohibition of harm – both inflicting and reciprocating harm, excess risk-taking principles, and misuse of wealth. Further, he emphasises the fundamental principles of “*maṣlahah*,” where Islam encourages the wealth preservation of people and discourages reckless wasting of money. When considering the opinions of the classical legal

experts on their perspective of “currency,” jurists of the Ḥanafī school of thought (Efindī) propose that “*ta’āmūl*” (regular usage) establishes currency because currencies under a centralised network provide a point of reference and facilitate transactions in the market. Simultaneously, jurists of the Shāfi‘ī school of thought also give this opinion and state that the government should be responsible for issuing coins and currencies to prevent fraudulent activities and corruption (Nawawī & Ḥassūn, 2004). However, in recent times, “value” has been assigned to Bitcoin, which people use for transactions. However, based on the previous opinions of many jurists, it is impermissible because the “value” can be manipulated, exploited, and speculated. These features increase the potential of “wasting wealth.”

Another delineating feature of the impermissibility of Bitcoin is that it contains elements of *gharār* (uncertainty). Because *gharār* is among the prohibited elements in commercial transactions, *gharār* can be classified into three degrees: minor, medium, and excessive. Minor and medium *gharār* is permissible in transactions, but excessive *gharār* leads to speculation and gambling, which should be avoided entirely in transactions (Muhammad, Sairally & Habib, n.d. 2015). Usually, the monetary value of a currency is determined based on its economic factors. Currency value fluctuations are natural in the ordinary course of business. They are frequently supported by underlying economic factors such as the demand for currency and the country’s economic policies. Nevertheless, the value of Bitcoin is not often supported by underlying economic factors and is based on speculation. This feature supports the fact that Bitcoin is an uncertain cryptocurrency (Dagi, 2018).

Bitcoin is associated with excess-risk-taking principles (Sattar, 2018), which frequently results in massive injustices because anyone involved in this currency’s buying chain may suffer huge losses due to the high likelihood of the currency falling precipitously. Since cryptocurrencies do not possess the traits of being qualified as a medium of exchange (Dagi, 2018), the generation of cryptocurrencies results in a massive money-making process that does not result in economic activities. Cash flow in the commercial market can be disrupted when there is a surge in investment in cryptocurrencies in the market, with wealth being blocked without generating any economic activities. Hence, the accumulation of a large amount of money in the name of

investment can lead to massive economic turmoil and a major economic crisis.

Furthermore, Bitcoin transactions are not encrypted. Every transaction aggregated into a block may be browsed and viewed. This technology is subjected to hacking, which adds to the sense of unpredictability (*gharār*). This coin also has no physical form and exists as a network. It has no inherent worth because it cannot be exchanged for another commodity, such as gold (Abu Bakar, Rosbi & Uzaki, 2017). In summation, cryptocurrencies are deemed impermissible because they are not asset-backed and consist of anonymous users possessing speculative transactions with a high potential for fraudulent activities.

Permissibility Approach

The principle of permissibility in formulating contracts originates from an Islamic legal maxim, “permissibility is the original rule for contracts and conditions.” This principle implies that there is no prohibition of acts except by evidence from primary sources (al-Qur’ān & Sunnah). Hence, this fact paved the way for Muslim scholars who pioneered a particular field of study to administer firms and place procedural measures as long as they do not contradict *sharī’ah* principles. Therefore, without clear evidence that it is prohibited by law, Bitcoin can be considered a valid currency based on the principles of permissibility.

Muslim scholars put forward several proposed views on the usage of cryptocurrency based on Islamic principles. However, the increasing controversy concerning the usage of Bitcoins by Muslim scholars has created confusion among Muslim entrepreneurs about investing in cryptocurrency. Mufti (2018) proposes that cryptocurrency fulfils all the attributes to be featured as money based on the view of the South-African fatwa Centre, *Dār al-‘Ulūm Zakariyya*, and Daud Bakar (The chairman of the Shari’ah board of the central bank of Malaysia). Simultaneously, Monzer Kahf (2018) is also in the proposing view of Bitcoin, except that it could cause speculation and loss of confidence. Moreover, (Kāsānī, 1986) asserts that for something to be considered as *al-māl* (property), it should possess “desirability” and “storability.” Bitcoin consists of the features of desirability. For example, decentralisation and borderless payment. It also has the features of storability because block chain consists of encoded Bitcoin and is entered into a public ledger. These characteristics of Bitcoin qualify it to be *al-māl*.

Simultaneously, in a lecture by Mohd Daud Bakar (Pikri, 2018), he asserted that cryptocurrencies would happen in the future irrespective of our likes and dislikes. He mainly focuses on the blockchain network and highlights that blockchain facilitates remittances rather than only exchanges, which would decrease the cost and time for customers. Further, he ensured that the identity associated with money could be kept on record through the blockchain network because it stores Bitcoins and their transactions provide greater transparency to its users.

When considering the principles of prohibition of risk from the Islamic perspective, Ibn Taymiyyah (1981) asserts that there is no authentic evidence, analogy, or text in Sharī'ah that proves the prohibition of every form of risk; but illegitimately acquiring other's properties is prohibited. However, possessing a partnership in an investment with a potential of high risk and being Sharī'ah-compliant cannot be considered impermissible. Therefore, in this point of view, investments, trading, and gambling are considered speculative risks. Alternatively, F. Adam (2019) differentiates between trading and gambling (*Maysir* and *Qimār*). Trading is a mutual partnership where both parties mutually gain or lose in a business venture. Nevertheless, gambling involves one party's gain at the expense of another. When considering Bitcoin transactions, both parties expect to gain from their existing assets, but it is not guaranteed that one party will lose for sure. Therefore, Bitcoin transactions come under the form of "trading" because it lacks the feature of gambling.

Daud Bakar underpins a more significant advantage of this network because it can be used in paying *Zakāt*. This feature helps to maintain accountability, and the *Zakāt* payers will be able to trace the impact done to the *Zakāt* receivers through the blockchain network due to its transparency. The advantage of Bitcoin being permissible will provide pathways to perform transactions with greater efficiency because there is no central authority, and the transactions are validated and possess higher transparency, as stated by Amir Mohamed (2016).

Maqāṣid Al-Sharī'ah Analysis of Bitcoin

With classical Islamic jurisprudence strictly maintaining the traditional cautious position, the current jurisprudential controversy over Bitcoin will never seem to end. The focus of *ijtihad* to date has been on finding a full match between a proposed product and the classical *Fiqh al-*

Sharī'ah with Islamic jurist mimicking one another. Many Islamic jurists regard any innovation that has no roots in the traditional practice of the Muslim community as a form of *bid'ah* in Islam which is prohibited. However, *ijtihad* will not function properly if the jurists keep mimicking the past, stick firm to the explicit rules of the classical *Fiqh al-Sharī'ah* and ignore the implicit rationale behind it (Sencal and Asutay (2019). *Ijtihad* which is unanimously considered as the most important tool for the development of *Sharī'ah* law and responsible for responding the pressing needs of Muslims in this ever-changing world should therefore be linked with *maqāṣid al-sharī'ah*. Most of the modern Islamic jurists make a considered distinction between permissible and impermissible *bid'ah*. An innovation that concerns the worldly affairs is permissible whereas an innovation in matters of religion is impermissible and a great sin. As many contemporary scholars have suggested, a new form of *ijtihad* should be practiced; one that can evolve with new developments and can ensure that its application mirrors the present time (Kamali, 2008). Jurists must be prepared to go behind the explicit rulings of *Sharī'ah* to discover the true rationale of such rulings and to develop into competent *Sharī'ah* law interpreters who may then rightly engage in a re-examination of modern transactions in light of their true nature, function and purpose within the contemporary complex economic landscape (Kamali, 2002). The key proposition of this paper is therefore to resort to the *maqāṣid al-sharī'ah*, as an innovative tool to close this jurisprudential controversy. While providing a brief description of *maqāṣid al-sharī'ah*, this section applies a *maqāṣid al-sharī'ah* analysis based primarily on its prime limb of preservation of wealth to the existing jurisprudential controversy to settle the issue.

Maqāṣid Al-Sharī'ah

Maqāṣid means purpose, objective, intention, and aim. Therefore, *maqāṣid al-sharī'ah* can be translated as “the higher objectives of the *sharī'ah*,” which refers to the goals and objectives of Islam as a system of life that constitutes standards, criteria, values, and guidance based on divine revelation (*wahy*). This guidance can be applied in practical life to solve human problems and guide the direction of human life (Auda, 2010). Tāhir Ibn 'Āshūr. (n.d.) defined *maqāṣid* as “the deeper meanings and inner aspects of wisdom,” which is considered in most areas and circumstances of legislation.

Although the main elements of *maqāṣid* exist in the primary sources, the textualist tradition of the early three centuries did not take much interest in the *maqāṣid*-oriented approach. It was not until the time of Juwaynī, Ghazzālī, and then Shāṭibī, that incredible development took place in the formation of *maqāṣid* (Kamali, 1991). The idea or doctrine of *maqāṣid al-sharī'ah* has gradually captured the attention of increasing numbers of modern Muslim scholars for solving contemporary issues. The formative stage of the theory of *al-maqāṣid* was initiated by Juwaynī (1078 A.D.). His student, Al-Ghazzālī, later developed this theory, which paved the way for *maqāṣid* to evolve significantly as an essential discipline branch. *Maqāṣid-al-sharī'ah* is divided into three main categories (Ghazzālī,1970); *al-darūriyyat* (Necessities), *al-ḥājjiyyat* (Need), and *al-Taḥsīniyyat* (Embellishments). The last two are respectively less essential and unessential for human life. For example, marriage, trade, and means of transportation are less essential as one's lack of any of these would not pose a threat to life. Likewise, luxurious things such as using perfume, stylish clothing, and beautiful homes carry the lowest priority in one's life. The first, on the other hand, is viewed as the wholesome essentials of humans' life which is divided it into a further six categories of preservation of one's religion (*dīn*), preservation of human self (*nafs*), preservation of intellect ('*aql*), preservation of posterity (*nasl*), preservation of wealth (*māl*) and preservation of honour ('*ird*). The six categories of *maqāṣid* serve as fundamental frameworks that direct human lives in this world to achieve ultimate happiness in the hereafter.

Preservation of Wealth and Bitcoin

As an innovative instance of *māl* in the contemporary world, Bitcoin has the capacity to be argued for permissibility based on the preservation of wealth as a prime limb of *maqāṣid al-sharī'ah*. Muslim jurists assert that the preservation of wealth has to be achieved through at least five dimensions as follows: preservation of wealth through the protection of ownership, preservation of wealth through acquisition and development, preservation of wealth from damage, preservation of wealth through its circulation, preservation of wealth through its value protection and preservation of wealth through the protection of ownership.

Preservation of wealth through the protection of ownership implies that by ownership of *māl*, Muslims should be able to use that *māl*

(*ʿAyn*). According to Ṭāhir ibn ʿĀshūr (n.d.), the following factors are identified as the only means to possess ownership (*tamalluk*): firstly, exclusive possession of something to which no one else has the right. Secondly, working with the proprietor (e.g., *mughārasah*), and thirdly, transferring an item from its owner to someone else through donation or inheritance and exchanging two counter-values in sales. Since ownership is recognised in Islam, emphasis on the “protection of ownership” is also made compulsory. Allah says, “Do not consume your property wrongfully” (*al-Qurʿān* 2:188). Therefore, to ensure the purpose of protecting ownership, various dealings have been imposed to monitor the transfer of economic rights (*ḥuqūq al-māliyyah*). These dealings should be binding, which indicate that mutual consent of both parties is taken.

Even though the “desirability” and the “storability” of Bitcoin consider it as “*māl*” (property), its protection of ownership is not defined. Moreover, Bitcoin is not a currency officially issued by a country’s Central Bank. It is a decentralised currency. In *Fiqhi* perspective, ‘Jahala’ and uncertainty invalidate transaction. The natural source of Bitcoin, the guarantee, and its management are constantly in question. Such a futile currency cannot be considered authoritative or subject of ownership in Islamic economic terms. The absence of a central monetary authority paves the way for issuing fake, abusive or unreliable currencies while the issuer may insist on higher standards of such currencies. The absence of regulated issuer leads to disputes and injustices among people. Therefore, all the above-stated features of Bitcoin hamper the preservation of wealth through the protection of ownership.

The second form of preservation of wealth is preserving wealth from damage. Sharīʿah emphasises the preservation of property from being damaged or exposed to any harm. The preservation of wealth from damage can be looked at through two dimensions: protecting wealth from risk and preventing wealth from damage. The concept of protection of wealth and property from risk is stated in the Qurʿān (2: 282), which directs Muslims to record debts and business dealings. This fact is further strengthened by another clear command in the Qurʿān “Do not contribute to your destruction with your own hands” (2:195). These verses emphasise the fact that humans should not put their wealth at risk of being destroyed. If such a crisis is not handled effectively,

it could result in devastating damages that would cripple a country's economy and affect the lives of the general populace. Therefore, to prevent harm and for the benefit of society, it is crucial to handle risks effectively. This statement is in accordance with the view of Dr. Abdus Sattar (2018), which states that Bitcoin has a definitive relationship with excessive risk-taking principles, which usually leads to grave injustices. Furthermore, due to the high likelihood that the currency would fluctuate sharply, anyone involved in the buying chain of this currency could sustain significant losses.

The third form of preservation of wealth is through its circulation (*ravāj*). Circulation here means the transfer of wealth in the community without causing any harm to the person who has obtained it legally. The Qur'ān has precisely indicated the need to prevent hoarding wealth within an individual or a specific group: This is so that they do not just circulate among those of you who are rich (59:7). Maqāṣid al-Sharī'ah establishes measures for preserving wealth that include two of the following factors: firstly, promoting investments and prohibiting hoarding of wealth, and secondly, through the prohibition of all types of manipulation and monopoly that designates wealth to a minority of wealthy people at the expense of the majority. However, the two measures mentioned above established by maqāṣid al-sharī'ah for the preservation of wealth are not followed by Bitcoin. Bitcoin promotes the hoarding of wealth. Adam (2019) explains that Bitcoins are created as a "store of value" to hoard wealth and not to use as a commodity. Furthermore, Bitcoin creates a monopoly among a limited group of wealthy people based on the limited access to Bitcoin, where only 21 million Bitcoins are available for access (Satoshi Nakamoto, 2008)

The fourth form of preservation of wealth is through its value protection. Maqāṣid al-Sharī'ah endorses severe concerns about the preservation of wealth by protecting its value and the natural movement of commodity prices. Allah asserts this in the Holy Qur'ān: "Do not undervalue people's goods" (7:85). This validates the fact that the Sharī'ah considers money as a medium of measurement rather than a commodity. However, these features do not align with the characteristics of Bitcoin. Since Bitcoins possess only a limited number of currencies, it is disqualified as a "medium of exchange." This disqualification does not provide a «store of value» for Bitcoin (Adam, 2019).

Moreover, it is noticeable that these currencies are traded based on speculation, which is equivalent to gambling. The Shari'ah principles highly prohibit this feature since it may result in the acquisition of others' properties unjustly. Additionally, in any financial transaction, economic justice is promised by the "stability" of the currency. However, in Bitcoin transactions, the highly fluctuating value of Bitcoin does not provide stability and leads to injustice due to price turmoil. Furthermore, it can be noticed that the limited availability of Bitcoins may directly cause high fluctuation because people tend to compete to gain Bitcoins before they get depleted.

Interpretations of certain features of *darūriyyat*, *hājiyyat*, and *taḥsīniyyat* that do not comply with the characteristics of Bitcoin are discussed through a brief analysis of each significant category of maqāṣid al-sharī'ah. For example, *darūriyyat* is defined as the interests of lives that people essentially need. These comprise the five objectives of Shari'ah: *Dīn* (religion), *naḥs* (life), *'aql* (intellect), *nasl* (posterity), and *al-māl* (wealth) (Juwaynī). If these factors are ignored, coherence and order will be diminished, leading to *fasād* (chaos and disorder) that will prevail in this world and result in an apparent loss in the hereafter. However, some jurists are in opposition to this view. They argued that necessities are not confined to these five maqāṣid. Therefore, they propose additional *darūriyyat* such as equality, freedom, and the protection of the environment.

When considering Bitcoin from this viewpoint, the greater transparency associated with the blockchain network makes it more prone to errors and fraudulent activities. Furthermore, the increase in electronic piracy in the modern era possesses tremendous potential for stealing Bitcoins from the network and instability in the environment unique to Bitcoin users. This feature ultimately leads to chaos and disorder (*fasād*) and fails in protecting the environment. Furthermore, Bitcoins cannot be easily accessed because they are limited in amount and requires special training and machines to perform mining. This limitation creates inequality among the public and hampers the concept of "equality."

Hājiyyat consists of interests based on people's needs other than the five objectives of Shari'ah proposed by Al- Juwayni. Neglecting these interests would lead to hardship but not total disruption of the

regular order of life. These are needed to alleviate hardship or facilitate life so that life may be free from distress. In the case of Bitcoins, the cost involved in the process of mining Bitcoins cannot be borne by many people. These features neither alleviate hardship nor facilitate life and thus lead to hardship and instability, which is against Sharī'ah's principles. *Tahsīniyyat* refers to refinement and perfection in the conduct of people. For example, in day-to-day matters, Sharī'ah encourages fair dealing. However, Bitcoin maintains a highly fluctuating nature about its value without underlying economic factors insisting on the fluctuation (Dagi, 2017). These factors lead to injustices in trading since the value changes drastically.

Moreover, in Islamic jurisprudence, a substance is divided into two categories based on the order in which the transaction is prohibited i) *Tahrīm dhāt* or *tahrīm maqāṣid*, which implies that the subject in itself is forbidden. For example, alcohol and drugs. ii) *Tahrīm al-wasā'il* (Careem & Rifath, 2020) states that an entity is prohibited in a way that may lead to Haram or prohibition, depending on how it is handled. An example is lending with interest. Hence, under such legal classification, Bitcoin is not fundamentally prohibited as a form of currency. Instead, it is prohibited on the basis that its value is mainly driven by speculation, the uncertainty of its value, and the potential for economic injustices and fraud.

Conclusion

The use of currency has undergone various changes and developments throughout history. It is undeniable that the emergence of modern-day currencies has facilitated economic activity and increased security of transactions. That said, the cryptocurrencies are modern monetary invention, so there is no specific ruling over their permissibility in primary sources of Islamic law. The absence of such ruling necessitates a new *ijtihād*. Although Bitcoins may be argued to be permissible currency based on the permissibility principle of the law of *mu'āmalāt* in Islam, stronger reasons suggest otherwise. As explained earlier regarding *Tahrīm al-Wasā'il*, the uncertain methods of handling Bitcoin make it not asset-backed. As its process is speculative, Bitcoin transactions often involve a high potential for fraud. As proposed by Ali al Qurra Dagi (2017), Bitcoin can be acceptable and permissible if it becomes compliant with three requirements: (1) A country adopts

cryptocurrency as its primary and secondary currency. This adoption would bring Bitcoin under a regulatory framework because everything in Islam requires a regulatory body. (2) To issue cryptocurrencies through a network of banks. (3) To possess co-ownership of cryptocurrencies by the developer and investors in a joint-stock company.

An analysis of the different forms of preservation of wealth based on the theoretical framework of *maqāşid al-sharī'ah* concluded that Bitcoin does not comply with its objectives. Since Bitcoin does not define the protection of ownership because it is a decentralised currency, it does not achieve wealth protection due to its excess risk-taking principles. Furthermore, it does not preserve wealth through circulation because it creates a monopoly among the wealthy group of individuals and does not protect its value because Bitcoin is disqualified as a “medium of exchange” and is traded based on speculation.

As a concluding remark, implying the theoretical aspects of *maqāşid al-sharī'ah* on dealing with Bitcoin suggests that the objectives of *Sharī'ah* must be followed in managing Bitcoin-related entities by formulating corporate objectives and policies of Bitcoin complying with *maqāşid al-sharī'ah*. These formulated objectives must be incorporated to indicate whether the Bitcoin entity upholds Islamic principles. Fulfilling these two significant aspects of *maqāşid al-sharī'ah* by Bitcoin will make it adhere to the objectives of *Sharī'ah* and ultimately make it compliant with the principles of Islam.

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(ii) indirect quotation, write as Qur'ān, 30:36

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The glorious Qur'ān. Translation and commentary by A. Yusuf Ali (1977). US: American Trust Publications.

Ḥadīth

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(i) Al-Bukhārī, 88:204 (where 88 is the book number, 204 is the ḥadīth number)

(ii) Ibn Hanbal, vol. 1, p. 1

Reference:

(i) Al-Bukhārī, M. (1981). *Ṣaḥīḥ al-Bukhārī*. Beirut: Dār al-Fikr.

(ii) Ibn Ḥanbal, A. (1982). *Musnad Aḥmad Ibn Ḥanbal*. Istanbul: Cagri Yayinlari.

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